U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: SEP 20 2013 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Rachel Nimmo for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a provider of psychiatric consultation and treatment services. It seeks to permanently employ the beneficiary in the United States as a mental health counselor. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The issues in this case are whether the job offer portion of the labor certification requires a member of the professions holding an advanced degree; the Form I-140 Immigrant Petition for Alien Worker is based on a bona fide job offer; the petitioner has demonstrated the continuing ability to pay the proffered wage to the beneficiary since the priority date; and the proffered position is different and distinct from that of a licensed professional clinical counselor.

I. PROCEDURAL HISTORY

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).[1] The priority date of the petition is November 18, 2011.[2]

Part H of the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Master's degree in Psychology.
H.5. Training: None required.
H.6. Experience in the job offered: None required.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: None Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: "This is a paraprofessional counseling position. Therefore, state licensure is not required."

Part J of the labor certification states that the beneficiary possesses a master's degree in psychology from Los Angeles, California, completed in 2011. The record contains a copy of the beneficiary's Master of Arts in Psychology and transcripts from Los Angeles, California, issued in 2011.

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[1] *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).
[2] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition states that the petitioner failed to establish that the job offer portion of the labor certification requires a member of the professions holding an advanced degree because the petitioner stated that the proffered job of mental health counselor is paraprofessional and does not require licensure.

The AAO issued a Notice of Intent to Dismiss and Request for Evidence (NOID/RFE) on July 19, 2013 requesting that the petitioner explain the relationship between the beneficiary and the petitioner as the owner, officer, and incorporator of the petitioning limited liability company, and provide any evidence of the relationship that the petitioner may have provided to the DOL; demonstrate the continuing ability to pay the proffered wage to the beneficiary since the priority date; and explain how and why the proffered position of mental health counselor at the petitioner's psychiatric practice in Newport Beach, California, is different and distinct from that of a licensed professional clinical counselor.

In response, counsel argues that the duties of the proffered position of mental health counselor are more akin to that of a psychological assistant than a licensed professional clinical counselor. Counsel declares that the duties of the proffered position are the same as the duties of a psychological assistant who is employed with and submits copies of job postings in support of her declaration. Counsel contends that none of the submitted job postings require state licensure to practice as a psychological assistant. Counsel states that the beneficiary has a pending application with the Board of Psychology to register as an assistant psychologist, and that the beneficiary will work under the direct supervision of the petitioner, who is a board certified psychiatrist. Counsel contends that a psychological assistant does not require licensure to practice in California, and that the education requirements for a psychological assistant vary from that of a master's degree to a doctorate degree.

Counsel also asserts that the petitioner has the continuing ability to pay the yearly proffered wage of $29,224.00 to the beneficiary since the priority date of November 18, 2011, and submits tax returns for 2011 and 2012 in support of the assertion.

Counsel declares that the petitioner's owner is not related to the beneficiary by blood, marriage, or by any other family ties and submits copies of the birth certificates of the petitioner's owner and the beneficiary in support of the declaration. Counsel also contends that the petitioner's owner and the beneficiary may have the same surname, but Counsel argues that the term "family" is not defined by DOL or U.S. Citizenship and Immigration Service (USCIS), but the Act defines "family members" as immediate family and persons for whom an immigrant visa petition may be denied, which is limited to children, spouses, parents and siblings. Counsel also asserts that the petitioner's owner and the beneficiary are roommates, but there is a broad range of closeness in roommate relationships and that a roommate relationship should not be construed as part of the definition of "family member" for purposes of Section C.9 of the labor certification. Counsel also contends that the beneficiary does not have any ownership interest in the petitioning entity, and declares that DOL audited the petitioner regarding the existence of a bona fide job opportunity, and certified the labor certification, presumably satisfied of a bona fide job opportunity.

The petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis.[3] The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[4] A petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision.[5]

II. LAW AND ANALYSIS

The Roles of the DOL and USCIS in the Immigrant Visa Process

At the outset, it is important to discuss the respective roles of the DOL and USCIS in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
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> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
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> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are

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[3] *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

[4] The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[5] *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[6] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> . . .
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> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

> The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United

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[6] Based on revisions to the Act, the current citation is section 212(a)(5)(A).

> States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

> The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).
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> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and the beneficiary are eligible for the requested employment-based immigrant visa classification.

Eligibility for the Classification Sought

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the

minimum requirement for entry into the occupation." The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
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> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an "advanced degree" is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

In the NOID/RFE, the AAO concluded that the duties of the proffered position of mental health counselor described at Part H.11, of the ETA Form 9089 substantially matched the description of "professional clinical counseling" contained in section 4999.20.(a) of the California Business and Professions Code. Counsel argues that the duties of the proffered position are more akin to that of a psychological assistant – an occupation that does not require a license in the state of California, than a licensed professional clinical counselor, and submits job postings for a psychological assistant from [redacted] as well as a copy of an application to employ a psychological assistant signed by the petitioner and beneficiary on August 15, 2013 in support of her argument. While counsel contends that the proffered position is akin to that of a psychological assistant, the AAO finds that there are specific statutory requirements for a psychological assistant under California law that have not been met by the petitioner. For example, Cal. Bus. & Prof. Code Ann. § 2913 states that the person who is to be employed as a "psychological assistant" is to be termed a "psychological assistant." *See also* Cal. Code Regs. tit. 16, § 1396.4 ("A psychological assistant shall at all times and under all circumstances identify himself or herself to patients or clients as a psychological assistant to his or her employer or responsible supervisor when engaged in any psychological activity in connection with that employment."). As the labor certification states that the beneficiary is to be employed with the petitioning entity as a "mental health counselor," the job title in the labor certification is contrary to California law. Furthermore, regulations of the Board of Psychology specifically state that no

one may employ or supervise a psychological assistant without the approval of the board, and submission of an application in and of itself is not sufficient. Approval must be granted before the assistant can begin providing psychological services. *See* Cal. Bus. & Prof. Code Ann. § 2913 (the licensed psychologist, board certified psychiatrist, contract clinic, psychological corporation, or medical corporation, is required to have registered the psychological assistant with the board); *see also* http://www.psychboard.ca.gov/licensee/psychassis-inst.shtml (accessed September 18, 2013). The petitioner submitted into the record an application to employ a psychological assistant signed by the petitioner and beneficiary on August 15, 2013, but provided no evidence of its actual submission to the board. Also, the application to employ a psychological assistant requires under Section IX that the employing entity set forth the specific psychological services to be rendered by the psychological assistant. We find that the job duties stated in the application are not identical to the duties of a mental health counselor as stated in the labor certification, but are very similar to the job duties in the aforementioned job posting with

For the reasons explained above, we find unpersuasive counsel's assertion that the duties of the proffered position of mental health counselor are akin to those of a psychological assistant. Thus, counsel has not demonstrated that the duties of the proffered position are different and distinct from that of a licensed professional clinical counselor and that the beneficiary is qualified to perform the duties of the proffered position. A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). The petitioner must establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977). The petition must therefore be denied for these reasons.

The AAO also concluded that the petitioner had not demonstrated the continuing ability to pay the proffered wage of $29,244.00 to the beneficiary since the priority date of November 18, 2011, and until the beneficiary obtains lawful permanent residence. In response to the request for evidence, the petitioner submitted tax returns for 2011 and 2012; bank statements for 2011, 2012, and 2013; and credit card statements for 2011 and 2012 to establish its ability to pay the proffered wage since the priority date, and until the beneficiary obtains lawful permanent residence.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA Form 9089 labor certification application establishes a priority date for any immigrant petition later based on the ETA Form 9089, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, USCIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if

the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the record reflects that the petitioner has not employed and paid the beneficiary.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during the relevant period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

The petitioner is a sole proprietorship, a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return. Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *See Ubeda*, 539 F. Supp. at 650.

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioning entity structured as a sole proprietorship could support himself, his spouse and five dependents on a gross income of slightly more than $20,000.00 where the beneficiary's proposed salary was $6,000 or approximately thirty percent (30%) of the petitioner's gross income.

In the instant case, the sole proprietor supports only herself. The proprietor's tax returns reflect her adjusted gross income for the following years:

- In 2011, the proprietor's IRS Form 1040, line 37, stated adjusted gross income of $219,667.00.
- In 2012, the proprietor's IRS Form 1040, line 37, stated adjusted gross income of $151,488.00.

Therefore, in 2011 and 2012, the sole proprietor's adjusted gross income covers the proffered wage of $29,244.00. However, the petitioner submitted a list of her yearly household expenses for 2011 and 2012, which totaled $119,942.00 and $135,624.00, respectively. We note that we have included in these totals the yearly household medical, property tax, and charity expenses because they were not included in the adjusted gross income in line 37 of IRS Form 1040.[7] After taking into account personal household expenses, the petitioner established its ability to pay the proffered wage in 2011, but did not establish its ability to pay the proffered wage in 2012. However, the AAO does find that the petitioner's bank account statements for 2012 reveal that she had the ability to pay the remainder of the beneficiary's salary for that year. Therefore, from the date the labor certification was accepted for processing by the DOL, the petitioner has established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of its adjusted gross income, bank account statements, and personal household expenses.

The AAO also requested that the petitioner explain the relationship between the beneficiary and the petitioner as the owner, officer, and incorporator of the petitioning limited liability company, and provide any evidence of the relationship that the petitioner may have provided to the DOL. The petitioner has the burden of establishing that a valid employment relationship exists, and that a bona fide job opportunity is available to U.S. workers. *See Matter of Amger Corp.,* 87-INA-545, (BALCA Oct. 15, 1987). Counsel submits copies of the petitioner's and the beneficiary's birth certificates and lease agreements in support of the assertion that the petitioner's owner and beneficiary are roommates and not related to each other by blood, marriage, or any other family ties. Counsel contends that the petitioner's owner and the beneficiary may have the same surname of Counsel also asserts that a roommate relationship should not be included as part of the definition of "family member" for purposes of Section C.9 of the labor certification. Even if we accepted the contention that the petitioner's owner and beneficiary are not related by blood, a relationship invalidating a bona fide job offer may arise not only by a blood relationship, but from a relationship that is "financial, by marriage, or through friendship." *See Matter of Sunmart* 374, 00-INA-93 (BALCA May 15, 2000). Counsel contends that the beneficiary does not have any ownership interest in the petitioning entity. While the submitted business records do not reflect the beneficiary as having any ownership interest in the petitioning entity, we find that counsel's assertion that there is a broad range of closeness in roommate relationships does not help explain the relationship between the petitioner's owner and the beneficiary, who have resided together at Irvine, California, as roommates, and presumably as roommates at Buena Park, California, in light of the sublease for room rental agreement. Counsel declares that DOL audited the petitioner regarding the existence of a bona fide job opportunity, and certified the

[7] For 2011, the petitioner shows $1,750.00 deducted on line 29 of IRS Form 1040, but the list of personal expenses shows an average monthly deduction of $592.00 ($7,104.00 yearly). We have therefore considered $5,354.00 as the monthly expense. For 2012, the petitioner shows $2,268.00 deducted on line 29 of IRS Form 1040, but the list of personal expenses shows an average monthly deduction of $896.00 ($10,752.00 yearly). We have therefore considered $8,484.00 as the monthly expense.

labor certification after the audit. However, it is not clear from the evidence in the record that DOL was aware of the roommate relationship between the petitioner's owner and the beneficiary, and that more was considered than financial and familial relationships. The AAO therefore finds that the record lacks conclusive evidence that the Form I-140 petition is based on a bona fide job offer and that a pre-existing personal relationship had not influenced the labor certification. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

III. CONCLUSION

In summary, the petitioner failed to establish that the proffered position does not require licensure and that the beneficiary is qualified to perform the duties of the proffered position; and that the Form I-140 petition is based on a bona fide job offer.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.